

JUL 1 2002

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY KGAL

In the Matter of

CARL ARNAL; ADAN MARIN ALLEN;
SAGUARO PUBLIC ADJUSTERS, INC.;
THE CONSORTIUM OF PUBLIC
ADJUSTERS,

Respondents.

Docket No 02A-038-INS

ORDER SUMMARILY SUSPENDING
LICENSES AND NOTICE OF
HEARING

The Arizona Department of Insurance ("Department") alleges that Respondents Carl Arnal, Adan Marin Allen, Saguaro Public Adjusters, Inc., and The Consortium of Public Adjusters have violated provisions of Arizona Revised Statutes, Title 20. In light of the serious nature of these allegations, the Director of Insurance ("Director") finds that the public health, safety and welfare require emergency action, within the meaning of A.R.S. §41-1092.11(B).

THEREFORE, IT IS ORDERED summarily suspending the Arizona insurance licenses held by Respondents, effective immediately, pending the proceedings for revocation commenced this date.

EFFECTIVE this 1st day of July, 2002.


CHARLES R. COHEN, DIRECTOR
Arizona Department of Insurance

1 **NOTICE OF HEARING**

2 PLEASE TAKE NOTICE that pursuant to the provisions of Arizona Revised Statutes
3 ("A.R.S.") §§20-161 through and including 20-165, 41-1061 through and including 41-1066,
4 and 41-1092.01, the above-captioned matter will be heard before the Director of Insurance of
5 the State of Arizona or his duly designated representative, on the 19th day of August, 2002, at
6 9:00 a.m. at the Office of Administrative Hearings, 1400 West Washington, Suite 101,
7 Phoenix, Arizona 85007 (the "Hearing").

8 Motions to continue this matter shall be made in writing to the Administrative Law Judge
9 not less than fifteen (15) business days prior to the date set for hearing. A copy of any motion
10 to continue shall be mailed or hand-delivered to the opposing party on the same date of filing
11 with the Office of Administrative Hearings.

12 A.R.S. §20-164(B) entitles any person affected by this Hearing to appear in person and
13 by counsel, to be present during the giving and receiving of all evidence, to have a reasonable
14 opportunity to inspect all documentary evidence, to examine witnesses, to present evidence in
15 support of their interests and to have subpoenas issued by the Administrative Law Judge to
16 compel attendance of witnesses and production of evidence.

17 If Respondents are represented by counsel, the attorney(s) shall be licensed to practice
18 law in the State of Arizona or, if Respondents are insurers, they may be represented by a
19 corporate officer, pursuant to A.R.S. §20-161(B).

20 Pursuant to A.R.S. §41-1092.07(D), a clear and accurate record of the proceedings will
21 be made by a court reporter or by electronic means. Any party that requests a transcript of the
22 proceeding shall pay the cost of the transcript to the court reporter or other transcriber.
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On January 23, 1992, the Arizona Department of Insurance adopted A.A.C. R20-6-101 through 20-6-115, setting forth the rules of practice and procedure applicable in contested cases before the Director of Insurance. The hearing will be conducted pursuant to these rules

5 Questions concerning this Notice of Hearing should be directed to Assistant Attorney
6 General Mary Kosinski (602) 542-3702, 1275 West Washington Street, Phoenix, Arizona
7 85007-2926.

PURSUANT TO A.A.C. R20-6-106, RESPONDENTS SHALL FILE A WRITTEN ANSWER WITHIN 20 DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE ANSWER(S) TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENTS' POSITION OR DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER(S) SHALL BE DEEMED WAIVED. IF AN ANSWER IS NOT TIMELY FILED, RESPONDENTS SHALL BE DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS AS TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE INCLUDING SUSPENSION, REVOCATION, DENIAL OF LICENSE, OR RENEWAL OF A LICENSE, IMPOSITION OF A CIVIL PENALTY AND/OR RESTITUTION TO ANY PARTY INJURED.

PERSONS WITH DISABILITIES MAY REQUEST REASONABLE
ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR
ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS
SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE

1 ACCOMODATIONS. IF YOU REQUIRE ACCOMMODATIONS, PLEASE CONTACT THE
2 OFFICE OF ADMINISTRATIVE HEARINGS AT (602) 542-9826.

3 The allegations supporting this notice of hearing are as follows:

4 1. Carl Arnal ("Arnal") was at all material times licensed as a
5 resident adjuster, Arizona license number 7444, which license expired April 30, 2002.

6 2. Adan Marin Allen ("Allen") is currently, and was at all material times, licensed as
7 a resident adjuster, Arizona license number 45941, which license expires October 31, 2002.

8 3. The Consortium of Public Adjusters, Inc. ("the Consortium") is currently, and was
9 at all material times, licensed as a resident adjuster, Arizona license number 64876, which
10 license expires July 31, 2002. The Consortium purports to be an Arizona corporation,
11 however, the Consortium did not complete the filing process with the Arizona Corporation
12 Commission to effectuate the incorporation.

13 4. Saguaro Public Adjusters, Inc., ("Saguaro"), an Arizona corporation, was at all
14 material times licensed as a resident adjuster, Arizona license number 6980, which license
15 expired February 28, 2002.

16 5. Oxford Adjustment Company, Inc. ("Oxford") is not a foreign or domestic
17 corporation qualified to do business in the State of Arizona. Oxford also is not currently, nor
18 has it ever been, licensed as an adjuster in this state. Allen is the "President" of Oxford.

19 **COUNT I**

20 6. On or about July 10, 1998, the Consortium submitted an application for
21 licensure as a firm or corporation. The Affidavit of Verification on the application was executed
22 by Arnal, who is listed as the Consortium's president and vice-president. The Affidavit states,
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1 in part, that the applicant "is organized under the laws of the State of Arizona or possesses
2 official authority to do business in Arizona.

3 7. In conjunction with the application, Arnal submitted Articles of Incorporation for
4 the Consortium. The articles were date-stamped by the Arizona Corporation Commission on
5 November 10, 1997, and also bore an "Expedited" stamp. Arnal filed these Articles with the
6 Department as complete and final Articles of Incorporation. The Department issued a resident
7 adjusters license to the Consortium.

8 8. The Department subsequently discovered that the "Expedited" stamp indicates
9 that the Articles of Incorporation were returned to Arnal for additional information. Therefore,
10 the Articles were submitted to the Arizona Corporation Commission, but not "filed." The
11 additional information was never provided, the Consortium's Articles of Incorporation were
12 never filed and the Consortium is not a corporation pursuant to Arizona law.

13 9. Arnal submitted the "non-filed" Articles of Incorporation with the Consortium's
14 license application and attempted to pass them off as "filed" Articles.

15 **COUNT II**

16 10. Sucasa Produce Partnership ("Sucasa") is in the fresh fruit and vegetable sale
17 and distribution business. On July 13, 1999, one of Sucasa's warehouses was destroyed by
18 fire and its remaining three warehouses sustained fire damage. Sucasa was insured by
19 Hartford Casualty Company ("Hartford") for the loss.

20 11. On or about July 16, 1999, Arnal made an unsolicited call to Sucasa on behalf of
21 the Consortium and said that the Consortium wanted to represent Sucasa in negotiating its
22 claim against Hartford.

23 12. On or about July 23, 1999, Sucasa executed an "Adjuster's Authorization" with
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1 the Consortium. In exchange for the Consortium's services in investigating, negotiating and
2 adjusting the settlement of Sucasa's claim, the Consortium would receive 10% of any amount
3 recovered ("the Consortium Agreement").

4 13. Arnal represented to Sucasa that payments received from Hartford would be
5 issued jointly to Sucasa and the Consortium and placed in the trust account maintained by the
6 Consortium for Sucasa's benefit, from which the proceeds would be remitted.

7 14. On April 12, 2000, Sucasa executed Hartford's "Policy Holders Release –
8 Subrogation Receipt" for a total payment of \$850,660.85.

9 15. On August 2, 2000, Sucasa filed a Verified Complaint and Application for
10 Issuance of Provisional Remedy with notice against all Respondents in Pima County Superior
11 Court, Case No. C20004017. The Complaint alleged that pursuant to the Consortium
12 agreement, the Consortium retained 10% of the settlement amount or \$85,066.09, leaving a
13 net balance of \$765,594.77 due and owing to the benefit of Sucasa. The Complaint further
14 alleged that from the proceeds received from Hartford, the Consortium paid \$114,094.70 to
15 others for the benefit of Sucasa and paid \$359,000.10 to Sucasa, leaving a balance due
16 Sucasa of \$292,500.00 The Complaint requested the balance due, prejudgment interest on
17 the balance due from April 13, 2000, Consortium's claimed fees of \$85,066.09 and Sucasa's
18 costs and fees.

19 16. The Department has evidence that at least six checks totalling \$778,899.00 were
20 issued by Hartford to Sucasa and the Consortium and endorsed by Sucasa for deposit only in
21 the Consortium's client trust account.

22 17. On September 19, 2000, a Default Judgment was entered against Respondents
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1 in the above-referenced case in the principal sum of \$377,566.09, with interest on that sum at
2 the rate of 10% per annum from May 17, 200 and for Sucasa's costs in the amount of
3 \$302.00.

4 18. As of November 7, 2001, the only amounts Sucasa has received in satisfaction
5 of the judgment were garnished from the Consortium's bank accounts: \$122,803.28 from a
6 Bank of Tucson account and \$21,306 from a Bank of Arizona account.

7 **COUNT III**

8 19. Templo La Hermosa Church and Academy ("La Hermosa") is located at 7142 N.
9 59th Avenue, Glendale, Arizona. The record owner of the property is Moises Herrera. On or
10 about early 1997, one of the buildings on the La Hermosa property was destroyed by fire. La
11 Hermosa was insured by Preferred Risk Mutual Insurance Company, now known as Guide
12 One Insurance Company ("Guide One"), for the loss.

13 20. On or about May 12, 1997, La Hermosa entered an agreement with Saguaro to
14 represent La Hermosa in the investigation, negotiation and adjustment of the settlement of La
15 Hermosa's claim.

16 21. Based upon information and belief, the Department alleges that Arnal allowed
17 Saguaro's corporate charter to lapse and assigned to the Consortium all of Saguaro's interest
18 in the contract between Saguaro and La Hermosa. All subsequent dealings in the settlement
19 of La Hermosa's claim were with Arnal through the Consortium.

20 22. The Consortium negotiated a settlement on behalf of La Hermosa with Guide
21 One in the amount of \$407,640,46. Checks in that amount were delivered by Guide One to
22 the Consortium and deposited in its trust account. The Consortium drew \$40,764.06 from the
23 proceeds representing the 10% fee under the agreement with La Hermosa. The Consortium
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1 also made a payment or payments totaling \$122,000.00 to Shamalta Construction Company,
2 the company hired to reconstruct the building.

3 23. Despite repeated demands by La Hermosa, the remaining \$244,876.41 held by
4 the Consortium has not as of this date been paid to La Hermosa or any other parties on La
5 Hermosa's behalf.

6 24. On December 15, 2000, Moises Herrera and La Hermosa filed suit against
7 Respondents Arnal, the Consortium and Saguaro in Maricopa County Superior Court, Case
8 No. CV2000-022157.

9 25. On June 11, 2001, a Judgment by Default was entered against Arnal, the
10 Consortium and Saguaro in the above-referenced case in the principal sum of \$244,876.41,
11 with interest on that sum at the rate of 10% per annum from June 11, 2001, and for Sucasa's
12 costs in the amount of \$302.00.

13 26. To date, Arnal, the Consortium and Saguaro have not jointly or severally paid
14 La Hermosa any amount in satisfaction of the judgment.

15 **COUNT IV**

16 27. On February 3, 2000, Red Dog Rebuilders, L.L.C.'s ("Red Dog's) property at 325
17 East 36th Street, South Tucson, Arizona, was severely damaged by fire. Red Dog was
18 insured by Westport Insurance Corporation ("Westport ") for the loss.

19 28. On or about February 4, 2000, Arnal solicited Red Dog with a letter and brochure
20 about Respondents' adjuster services.

21 29. On or about February 29, 2000, Red Dog executed an "Adjuster's Authorization"
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1 with the Consortium. In exchange for the Consortium's services in investigating, negotiating
2 and adjusting the settlement of Red Dog's claim, the Consortium would receive 10% of any
3 amount recovered from the insurer.

4 30. On or about September 8, 2000, Westport issued check #004660, payable to
5 "Red Dog, AZ Bank its Success and Assign, Consortium of Public Adjusters, Inc., c/o Paul
6 Gilbert Crawford & Co." in the amount of \$104,925. On September 19, 2000, the Consortium
7 deposited check #004660 into its trust account.

8 31. On or about October 2, 2000, the Consortium issued check #7075 to Shamalta
9 Construction in the amount of \$25,000.00. The check was drawn on the Consortium's trust
10 account and was returned to Shamalta Construction marked "Return to Maker."

11 32. On or about November 1, 2000, Red Dog terminated its agreement with the
12 Consortium and demanded immediate payment of the \$104,925.52 the Consortium was
13 holding on behalf of Red Dog.

14 33. On November 21, 2000, Red Dog filed suit against Respondents Arnal, the
15 Consortium and Saguaro, as well as Public Adjusters Bureau, L.L.C. The complaint was filed
16 in Pima County Superior Court, Case No. C2000-5870.

17 34. On May 3, 2001, a Default Judgment was entered against Respondents Arnal,
18 the Consortium and Saguaro, as well as Public Adjusters Bureau, L.L.C., in the principal sum
19 of \$205,552.30, plus punitive damages in the amount of \$200,000, together with costs in the
20 amount of \$519, together with attorneys' fees in the amount of \$37,944.51, for a total
21 judgment of \$444,015.81, plus interest thereon at the rate of 10% per annum until paid.

22 35. To date, Arnal, the Consortium and Saguaro have not jointly or severally paid
23 Red Dog any amount in satisfaction of the judgment.
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COUNT V

36. On or about January 2, 2001, Scott Carpenter ("Carpenter") sustained fire damage to his home. Carpenter was insured by Allstate Insurance Company for the loss.

37. On or about January 4, 2001, Carpenter contacted Allen and Carpenter executed an "Adjuster's Authorization" with the Consortium. In exchange for the Consortium's services in investigating, negotiating and adjusting the settlement of Carpenter's claim, the Consortium would receive 10% of any amount recovered from the insurer.

38. Also, on or about January 4, 2001, Allen sent two letters on Carpenter's behalf to Allstate advising the claims representative that "any and all communication, correspondence and/or contact must be direct to and through this office" and "demand is herewith made upon you to include the name of The Consortium Public Adjusters as payee on any and all drafts and/or checks issued in payment of this claim."

39. On or about January 12, 2001, Carpenter entered a repair work contract with Copper Canyon Custom Builders ("Copper Canyon") for an agreed upon contract price including how payments would be disbursed.

40. On February 6, 2001, Allstate issued claim check #74094895 for \$59,011.87. The check was made payable to Carpenter, the Consortium, Copper Canyon and Chase Manhattan Mortgage Corp. ("Chase"), that holds the mortgage on the fire-damaged property. Over the next eight days, Allen legitimately obtained the endorsements of Carpenter and the Consortium on the check.

41. The Allstate check also appears to be endorsed by Chase Manhattan Mortgage. However, upon review of the purported Chase endorsement, Chase's loss draft analyst provided an affidavit swearing that the endorsement was false and unauthorized, no other

1 parties were authorized to use the endorsement in question and that the signature affixed to
2 the Allstate check was unauthorized.

3 42. Allen deposited the Allstate check into Oxford's Bank One Arizona bank account.
4 Allen is the primary and only signor on Oxford's account.

5 43. On March 6, 2001, check #1119 in the amount of \$16,720.03 was drawn on the
6 Oxford account and made payable to Copper Canyon for the first draw on the reconstruction
7 contract. As of this date, no other payments have been made to Copper Canyon under the
8 contract and the reconstruction job is only 2/3 completed despite repeated demands by
9 Carpenter.

10 44. During a July 27, 2001 examination under oath, Allen testified that Arnal
11 instructed him to establish Oxford and open a bank account in Oxford's name. Allen also
12 testified that he obtained Carpenter and Copper Canyon's endorsements, but that he then
13 gave the check to Arnal and Arnal was to obtain the Chase endorsement. Allen testified that
14 to the best of his knowledge the remainder of Carpenter's funds were used by Arnal for
15 personal obligations.

16 **COUNT VI**

17 45. On March 1, 2001, the Department issued a subpoena duces tecum and to
18 Arnal on behalf of the Consortium requesting documents and Arnal's appearance for an
19 examination under oath on March 14, 2001. On March 7, 2001, the Department received the
20 signed return receipt indicating that Arnal received the subpoena on March 6.

21 46. On March 13, 2001, Arnal sent the Department a request for additional time to
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1 prepare documentation for the examination under oath. On March 14, the Department called
2 Arnal and left a message with his secretary that he had 10 days to contact the Department
3 and reschedule his appearance. Arnal never called to reschedule.

4 47. To date, Arnal/the Consortium have failed to comply with the subpoena duces
5 tecum .

6 48. Pursuant to A.R.S. §20-295(H), the Director retains authority to enforce Title 20
7 and impose any penalty or remedy authorized by Title 20 against any person who is under
8 investigation for or charged with a violation of Title 20 even if the person's license has been
9 surrendered or has lapsed by operation of law.

10 49. Respondent Arnal's conduct with respect to the filing of documents in
11 conjunction with the Consortium's application for licensure constitutes providing incorrect,
12 misleading, incomplete or materially untrue information in the license application within the
13 meaning of A.R.S. §20-295(A)(1) and pursuant to A.R.S. §20-321.02.

14 50. Respondents' conduct as alleged above constitutes a violation of any provision
15 of this title or any rule, subpoena or order of the Director within the meaning of A.R.S. §20-
16 295(A)(2) and pursuant to A.R.S. §20-321.02.

17 51. Respondents' conduct as alleged above constitutes improperly withholding,
18 misappropriation or conversion of monies or properties received in the course of doing
19 insurance business within the meaning of A.R.S. §20-295(A)(4) and pursuant to A.R.S. §20-
20 321.02.

21 52. Respondents' conduct as alleged above constitutes using fraudulent, coercive or
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1 dishonest practices, or demonstrating incompetence, untrustworthiness or financial
2 irresponsibility in the conduct of business in this state or elsewhere within the meaning of
3 A.R.S. §20-295(A)(8) and pursuant to A.R.S. §20-321.02.

4 53. Respondent Arnal's conduct as alleged above constitutes forging another's
5 name to any document related to an insurance transaction within the meaning of A.R.S. §20-
6 295(A)(10) and pursuant to A.R.S. §20-321.02.

7 54. Grounds exist to suspend, revoke or refuse to renew Respondents' insurance
8 licenses and/or impose a civil penalty against Respondents pursuant to A.R.S. §§20-295(A),
9 20-295(F) and 20-321.02.

10 WHEREFORE, if after hearing, the Director makes a finding of one or more of the
11 above-described allegations, the Director may suspend, revoke or refuse to renew
12 Respondents' insurance adjuster licenses and/or impose a civil penalty, pursuant to A.R.S.
13 §§20-295(A), 20-295(F) and 20-321.02.

14 Pursuant to A.R.S. §20-150, the Director of Insurance delegates the authority vested in
15 the Director of Insurance for the State of Arizona, whether implied or expressed, to the
16 Director of the Office of Administrative Hearings or his designee to preside over the hearing of
17 this matter as the Administrative Law Judge, to make written recommendations to the Director
18 of Insurance consisting of proposed findings of fact, conclusions of law and a proposed order.
19 This delegation does not include delegation of the authority of the Director of Insurance to
20 make the order on hearing or other final decision in this matter.

21 Pursuant to A.R.S. §41-1092.01, your hearing will be conducted through the Office of
22 Administrative Hearings, an independent agency. Enclosed please find a copy of the
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1 procedures to be followed.

2 DATED this 1st day of July 2002.

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5 CHARLES R. COHEN, Director
6 Arizona Department of Insurance
7

8 COPY of the foregoing mailed this
9 1st day of July 2002, to:

10 Carl Arnal
11 10560 N. Stargazer
12 Tucson, AZ 85737

13 Carl Arnal
14 2200 E. River Road, #120
15 Tucson, AZ 85718
16 Saguaro Public Adjusters, Inc.
17 2200 E. River Road, #120
18 Tucson, AZ 85718

19 Adan Marin Allen
20 7596 N. Mona Lisa, #3101
21 Tucson, AZ 85741

22 The Consortium of Public Adjusters
23 C/O PMB 414
24 7320 N. LaCholla, #154
Tucson, AZ 85741

Mary Kosinski
Assistant Attorney General
1275 West Washington Street
Phoenix, AZ 85007

Robert I. Worth, Administrative Law Judge
Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

1 Sara M. Begley, Deputy Director
Gerrie Marks, Exec. Assistant for Regulatory Affairs
2 Mary Butterfield, Assistant Director
Scott Greenberg, Chief Operating Officer
3 Catherine O'Neil, Consumer Affairs Legal Officer
Arnold Sniegowski, Investigations Supervisor
4 Arizona Department of Insurance
2910 North 44th Street, 2nd Floor
5 Phoenix, AZ 85018

6 A courtesy copy of this Notice of Hearing has been mailed/delivered to the persons
listed below. If you are listed below, you will receive no further notices or documents
7 concerning this matter other than the Director's final order. Information about the status of this
matter, including whether the hearing date has been changed, may be obtained by contacting
8 the Department of Insurance at 912-8454 or the Assistant Attorney General identified above,
at (602) 542-3702.

9 Daniel J. Coogan
10 Soto, Martin & Coogan, P.C.
441 N. Grand Avenue, Suite 13
11 P.O. Drawer 939
Nogales, AZ 85628-0939
12 Attorneys for Sucasa Produce Partnership

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16 J. Earnest Baird
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18 Phoenix, AZ 85004-4530
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19 Patrick J. Farrell
20 Farrell & Bromiel, P.C.
One S. Church, Suite 830
21 Tucson, AZ 85701-1620
Attorneys for Red Dog Rebuilders, L.L.C.

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1 Scott Carpenter
11332 W. Orchid Lane
2 Peoria, AZ 85345

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4 *Kathy Linder*
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1 COPY of the foregoing mailed this
2 19th day of July, 2002, to:

3 The Consortium of Public Adjusters, Inc.
4 2200 East River Road, No. 120
5 Tucson, AZ 85718

6 Adan Marin Allen
7 c/o 2200 East River Road, No. 120
8 Tucson, AZ 85718

9 Adan Marin Allen
10 3442 West Catalope Drive
11 Tucson, AZ 85741

12 
13 Curvey Burton